

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DIANA SURDUKAN,

NO. C 05-876 PR

Petitioner(s),

ORDER OF DISMISSAL

v.

SCHELIA A. CLARK, WARDEN, FCI,
DUBLIN, CA.,

Respondent(s).

Diana Surdukan ("Surdukan"), a prisoner currently incarcerated at the Federal Correctional Institution in Dublin, California, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, in which she alleged that the Bureau of Prisons has miscalculated the good time credits to which she is entitled under 18 U.S.C. § 3624(b), and that the miscalculation will result in a longer term of imprisonment than that to which she is entitled if she continues to earn good time credits for the rest of her sentence. She also alleged that, as a result of the miscalculation, her due process and equal protection rights have been violated.

A district court considering an application for a writ of habeas corpus shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the petition are

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1 vague or conclusory, palpably incredible, or patently frivolous or false. See Hendricks v. Vasquez,
2 908 F.2d 490, 491 (9th Cir. 1990). This action is summarily dismissed because a Ninth Circuit
3 decision flatly forecloses any relief on Surdukan's petition.

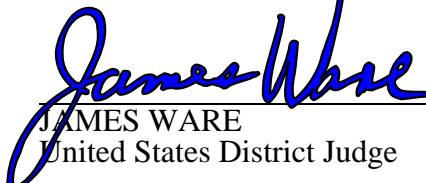
4 A federal prisoner serving a term of more than a year but less than life "may receive credit
5 toward the service of the prisoner's sentence, beyond the time served, of up to 54 days at the end of
6 each year of the prisoner's term of imprisonment, beginning at the end of the first year of the term"
7 for good behavior. 18 U.S.C. § 3624(b)(1) (emphasis added). The BOP's implementing regulation
8 provides that an "inmate earns 54 days credit toward service of sentence (good-time credit) for each
9 year served. This amount is prorated when the time served by the inmate for the sentence during the
10 year is less than a full year." 28 C.F.R. § 523.20; accord BOP Program Statement 5880.28 § 1-41.
11 Surdukan contends that the phrase "term of imprisonment" means the "sentence actually imposed"
12 whereas the BOP has interpreted the phrase to mean "time actually served."

13 The Ninth Circuit issued a decision which addresses the exact issue raised by Surdukan and
14 decided it squarely against Surdukan. In Mujahid v. Daniels, 413 F.3d 991 (9th Cir. 2005), the
15 court determined that its earlier decision in Pacheco-Camacho v. Hood, 272 F.3d 1266 (9th Cir.
16 2001), cert. denied, 535 U.S. 1105 (2002), was controlling. "Pacheco-Camacho established that the
17 phrase 'term of imprisonment' in 18 U.S.C. § 3524(b)(1) is ambiguous, that the BOP's interpretation
18 was reasonable and is thus entitled to deference." Mujahid, 413 F.3d at 999. As a result, Mujahid
19 was entitled to earn credits based on time actually served rather than on the sentence imposed. See
20 id.

21 Applying Mujahid and Pacheco-Comacho here compels the summary rejection of Surdukan's
22 petition.

23 The petition is DISMISSED with prejudice because it has no legal merit. The clerk shall
24 close the file.

25 Dated: May 17, 2006


JAMES WARE
United States District Judge

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THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

Diana Surdukan
46163-008 Unit b
Federal Correctional Institution
5701 8th Street, Camp Parks
Dublin, CA 94568

Dated: May 17, 2006

Richard W. Wieking, Clerk

By: /s/JW Chambers
Melissa Peralta
Courtroom Deputy

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